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BROOKS, CAMERON & HUEBSCH, PLLC  
1221 NICOLLET AVENUE, SUITE 500  
MINNEAPOLIS, MN 55403

EXAMINER
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PORTER, RACHEL L

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PAPER

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID PIERRE GENDRON, DALE PHILIP KINGSBURY,  
JEFFREY ALLEN ROMATOSKI, and LARRY ROBERT SITKA

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Appeal 2008-005158  
Application 09/911,846  
Technology Center 3600

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Decided:<sup>1</sup> June 2, 2009

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Before: MURRIEL E. CRAWFORD, HUBERT C. LORIN and  
ANTON W. FETTING, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1-19. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6.

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

The claimed invention is directed to systems and methods of routing medical images and other patient data between medical modalities and other various medical imaging devices (Spec. p. 2, ll. 11-13). Claim 1, reproduced below, is further illustrative of the claimed subject matter.

1. (Original) A computer-readable medium having a storage asset therein comprising:
  - a first data structure that stores asset meta information to control routing of the asset through a medical imaging network;
  - a second data structure that stores medical imaging information received from a medical imaging modality; a third data structure that stores pixel data received from the medical imaging modality;
  - a fourth data structure that stores patch data that includes modifications to the medical imaging information; and
  - a fifth data structure that stores error detection and correction information.

The references of record relied upon by the Examiner as evidence of obviousness are:

Schnellinger et al.	US 5,642,513	Jun. 24, 1997
Pourjavid	US 5,883,985	Mar. 16, 1999
Booth	US 6,065,073	May 16, 2000
Zandi	US 6,195,465	Feb. 27, 2001
DeLaHuerga	US 2002/0116509	Aug. 22, 2002

The Examiner rejected claims 1, 2, 8-13 and 18-19 under 35 U.S.C. § 103(a) as being unpatentable over Schnellinger; rejected claims 3 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Schnelliner in view of Pourjavid; rejected claims 6 and 16 under 35 U.S.C. § 103(a) as being

unpatentable over Schnelliner in view of DeLaHuerga; rejected claims 4, 5, 14 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Schnelliner in view of Zandi; and rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Schnelliner in view of Booth.

### OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellants and the Examiner. As a result of this review, we have reached the conclusion that the applied prior art does not establish the prima facie obviousness of the claimed subject matter. Therefore the rejections on appeal are reversed. Our reasons follow.

The following comprise our finding of facts with respect to the scope and content of the prior art. Schnellinger discloses medical imagery generated by a variety of source devices or modalities such as x-ray machines and magnetic resonance imaging devices (col. 2, ll. 23-25). The images are routed over a network to be viewed, edited, previewed, adjusted, manipulated or composed on a work station, stored or printed (col. 4, ll. 4-6; col. 11, ll. 47-51). A Medical Imaging Gateway (MIG) provides an image device interface for providing compression/expansion of data, communication control, temporary storage and security/error checking (col. 5, ll. 12-14, 24-27).

The disagreement between the Appellants and the Examiner is whether any of editing, adjusting, manipulating or compressing/expanding of the medical images in Schnellinger corresponds to “patch data that includes modifications to the medical imaging information” as recited in

independent claims 1, 8 and 18 (App. Br. 10-19; Examiner's Ans. 10-15). While the editing, adjusting, manipulating or compressing/expanding (hereinafter "editing") of the medical images in Schnellinger corresponds to modifications to the medical imaging information, independent claims 1, 8 and 18 each distinctly recite storing *both* medical imaging information *and* modifications to the medical imaging information, each of which must be given full effect as separate and distinct claim elements. *See Unique Concepts, Inc. v. Brown*, 939 F.2d 1558, 1563 (Fed. Cir. 1991).

Schnellinger does not set forth any specifics, nor does the Examiner provide any reasoning, of how the editing of medical images is performed in Schnellinger. Accordingly, we default to the most straight-forward explanation that any edits are performed *directly to* the original medical images. As the original and manipulated medical images in Schnellinger are the one and the same, Schnellinger does not disclose "patch data" *separate from* the medical imaging information as recited in independent claims 1, 8 and 18. Indeed, to find that the edited medical images corresponded to *both* the recited medical imaging information *and* the patch data would impermissibly read one of those elements out of the claim. *See Texas Instruments Inc. v. United States Int'l Trade Comm'n*, 988 F.2d 1165, 1171 (Fed. Cir. 1993).

Therefore we are constrained to reverse all rejections on appeal.

#### CONCLUSION AND ORDER

The rejections of claims 1-19 are reversed.

Appeal 2008-005158  
Application 09/911,846

JRG

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